IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.99 OF 2005

N.K. Kagliwal ...Petitioner.

V/s

The State of Maharashtra
and Anr. ...Respondents.

Mr. M.L. Sharma for the petitioner.
Mr. S.R. Shinde, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 28th February 2005

P.C.:

1. Petitioner is challenging the order of issuance of process by the Metropolitan Magistrate in a complaint filed by respondent No.2 under section 138 of the Negotiable Instruments Act.

2. It is submitted by the learned Counsel appearing on behalf of the petitioner that from the perusal of the averments made in the complaint, it can be seen that no prima facie case has been made out against the petitioner and there has been failure to disclose and fulfil ingredients of section 138 of the Negotiable Instruments Act. It is further submitted that the process has been issued mechanically and in a routine manner which indicates a gross negligence on the part of the Lower Court and which has resulted in grave miscarriage of justice to the petitioner. It is

further submitted that the entire complaint did not disclose that the complainant had made demand for payment, after the cheque was dishonoured. It is further submitted that the mandatory provisions of section 200 of the Criminal Procedure Code have not been followed. It is further submitted that though the order of issuance of process was issued on 22/8/2000, the summons was not served on him till the date of filing of the present Petition in November, 2004. The learned Counsel also invited my attention to the Lease Agreement for release of equipment entered into between the parties dated 28/9/1995 and referred to various clauses in the lease and submitted that the complaint did not disclose that the cheques had been received as lease rent against any lessee which was provided under the agreement and, on the contrary, complaint stated that these cheques had been received under agreement dated 28/9/1995 which was to be performed by acquiring and providing land and equipment on lease to the lessee. In support of his submissions, the learned Counsel relied upon the judgment of the Supreme Court in the case of M/s. Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others reported in 1998 SC 128. He relied on para 28 of the said judgment wherein the Supreme Court has observed that the criminal law

cannot be set into motion as a matter of course and that the order of Magistrate summoning the accused should reflect that he has applied his mind to the facts of the case.

3. I have heard the learned Counsel appearing for the petitioner. I have perused the complaint which is annexed to the petition. In para 2 of the complaint, there is specific averment that the accused in their respective capacities are persons who are in charge of and responsible to the conduct of business of accused No.1 and accused No.2 and 3 along with accused No.1 are liable to be prosecuted for having consented or connived at in the commission of the present offence on account of their negligence to ensure and make adequate arrangement to honour the cheques issued by accused No.1 and further on account of their negligence to comply with the requisitions made in the demand notice. Thereafter, further averments were made in the complaint.

4. In my view, averments made in the complaint are sufficient to disclose prima facie case against the petitioners. On the said complaint being filed, the following order has been passed by the learned Magistrate.

"Perused complaints also perused verification statement & documents produced on record. Heard advocate for complainant, Prima facie case has been made out against the accused for committing an offence under section 138 N.I. Act. Hence issue process of summons against accused accordingly. R/o 9-4-2000."

From the perusal of the order, it can be seen that the Magistrate had applied his mind to the averments made in the complaint as also the verification statement and documents produced on record. The submissions of the learned Counsel appearing on behalf of the petitioner that the requirement of section 200 of the Criminal Procedure Code has not been followed, therefore, cannot be accepted. So far as the other submission of the petitioner that the cheques were not issued for any existing liability is concerned, the said issue will have to be considered at the time of the trial only after evidence is adduced by both the parties and this issue cannot be decided at this stage. So far as the judgment on which the reliance is placed by the learned Counsel for the petitioner in the case of M/s Pepsi Food Ltd (supra) is concerned, there cannot be any dispute regarding the ratio laid

down in the said judgment. The said ratio cannot be made applicable to the facts of the present case. The Magistrate, prima facie, appears to have applied his mind to the facts of the case. Petitioner is trying to protract the hearing of the trial. Though the process is issued in 2000, Petition has been filed in November, 2004 i.e. almost after the lapse of 4 years. Petition, therefore, is misconceived and is dismissed. Trial Court is directed to expedite the hearing of the case. Trial Court is further directed to decide the case expeditiously within a period of six months.

V.M. KANADE, J.